The Bankruptcy Fairness and Employee Benefits Protection Act

Title I – Fairness for Employees and Retirees in Corporate Bankruptcies

Section 101. Prohibition of unfair reductions to employee and retiree benefits.

Prohibits employers from reducing compensation and benefits for employees and retirees beyond the minimum reductions necessary for the company to avoid liquidation; requires any proposal to reduce benefits for employees and retirees to also include an equivalent reduction in benefits for corporate officers and directors; and, if a bankruptcy judge approves the reduction or termination of compensation or benefits, provides employees with a claim for damages associated with the employer's breach of the employment contract.

Section 102. Payment of insurance benefits to retirees.

If a bankruptcy judge approves the reduction or termination of retiree health care benefits, requires employers to continue paying for the retirees' health care benefits for at least two years, at the same benefit levels that were provided prior to the bankruptcy; enables bankruptcy courts to require the payment of retiree health care benefits for periods exceeding two years if doing so is in the interest of fairness and equity; and provides retirees with a claim for damages equal to the value of the benefits that were lost as a result of the bankruptcy proceedings.

Section 103. Fair treatment of compensation.

Increases employees' priority claims for unpaid wages and benefits, from $10,000 earned in the previous 180 days to $25,000 earned in the previous year; prohibits payments to insiders in the previous year that were not made in the ordinary course of business or that resulted in unjust enrichment; and prohibits corporations from making bonus payments, including incentive bonus payments, to insiders during the course of the bankruptcy proceedings.

Section 104. Venue; change of venue.

Requires corporations to file for bankruptcy in the district where the largest share of employees, retirees, physical assets, and operations are located; and allows bankruptcy courts to transfer cases out of that district if doing so is in the interest of justice or for the convenience of the parties, but such transfer can only be made to the district where a company's principal place of business is located.

Section 105. Protection of benefits in Chapter 9 bankruptcy.

Establishes rights for municipal employees and retirees that are similar to those provided in corporate bankruptcies; prohibits reductions in their compensation and benefits beyond the minimum levels necessary for the municipality to emerge from bankruptcy; and provides them with a priority claim for unpaid wages and benefits.

Section 106. Requirement to make pension contributions.

Requires corporations that have filed for bankruptcy protection to continue making minimum funding contributions to their pension plans; treats missed pension contributions as administrative expenses; and allows the Pension Benefit Guaranty Corporation to enforce statutory liens during bankruptcy proceedings for unpaid pension contributions.

<u>Title II – Protection of Employee and Retiree Health Benefits</u>

Section 201. Notification of extent to which health care benefits can be modified or terminated.

Requires employers to notify employees as to the employees' and retirees' vesting rights for health care benefits and whether the terms of the employment contract permit the employer to unilaterally modify or terminate those benefits in the future; and, in suits alleging an improper reduction or termination of retiree health benefits, creates a presumption that such benefits are fully vested when the employee retirees or completes 20 years of service, unless the employer can show by clear and convincing evidence that the terms of the contract permit such reductions or terminations and that the employee was made aware, in clear and unambiguous terms, of the employer's right to modify or terminate benefits prior to entering into the contract.

Section 202. Protection of retirees under certain collective bargaining agreements.

Prohibits corporations and unions from entering into collective bargaining agreements that reduce or terminate retiree health care benefits for individuals who have already retired under the terms of a previous contract.

Section 203. Comptroller General report.

Requires the Government Accountability Office to issue a report on the use of spin-offs, mergers, bankruptcies, and other strategies used by corporations to avoid obligations to pay promised employee and retiree benefits; the impact of such avoidance on employees and retirees; the impact of such avoidance on Federal and State budgets; and recommendations to prevent corporations from evading contractual obligations to pay benefits to employees and retirees.